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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/936,621	01/10/2002	Ugo Siepel	294-109 PCT/US	7146
7590	04/15/2004		EXAMINER	
Ronald J Baron Hoffmann & Baron 6900 Jericho Turnpike Syosset, NY 11791			TRAN LIEN, THUY	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 04/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/936,621	SIEPEL ET AL.
	Examiner	Art Unit
	Lien T Tran	1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 29 January 2004.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-3, 9-11 and 13-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-3, 9-11 and 13-15 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All
 - b) Some *
 - c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claim 1 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

In the amendment filed Jan. 29, 2004, applicant amended claim 1 to include the limitation " heating said composition to a temperature above the glass transition temperature of said starch thereby expanding said composition" ; the limitation of " thereby expanding said composition " is not supported by the original disclosure. The specification does not disclose any correlation between heating above the glass transition temperature and the expanding of the composition. There is not disclosure that the heating to above the glass transition temperature causes the expanding of the composition.

Claims 1-3, 9-11 and 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Van Hulle et al in view of Jeffcoat et al.

Van Hulle et al disclose methods for preparing puffed snack products. The products are formed from gelatinized doughs whose total amylopectin starch content ranges between about 30-95%. The method comprises the steps of mixing amylopectin starch together with other ingredients to form a dough, cooking the dough in an extruder to gelatinize the dough, shaping the dough into pieces, drying the pieces and puffing the pieces. (see col. 5 lines 1-13 and col. 7)

Van Hulle et al do not disclose the amylopectin starch is non-cereal amylopectin starch obtained from potato, heating the composition to a temperature above the glass transition temperature to expand the composition comprising the amylopectin starch and cooling to below the glass transition temperature.

Jeffcoat et al disclose a stabilized, crosslinked waxy potato starch.

It would have been obvious to one skilled in the art to use other known source of high amylopectin-containing starch to make the amylopectin dough disclosed by Van Hulle et al. It would have been obvious to one skilled in the art to use waxy potato starch such as the one disclosed by Jeffcoat et al when one wants the flavor of potato and still meeting the amylopectin content requirement. As to the heating to above glass transition temperature, the dough in the Van Hulle et al process is heated to gelatinize the dough; thus, it is obvious the dough is heated to above the glass transition temperature. As to the expanding, the dough is heated just as claimed; thus, it is obvious the composition is expanded. The dough is dried at lower temperature; thus, it is obvious the dough is cooled to below the glass transition temperature. The dough pieces are puffed which will cause more expansion and the product is a snack that has a glazed, sugar coating. Since the dough is heated and expanded, the product is a heat expanded foodstuff.

In the response filed Jan. 29, 2004, applicant argues neither van Hulle et al nor Jeffcoat et al teach or suggest heating starch to above the glass transition temperature. Applicant states gelatinization of starch occurs at a temperature range of about 60-80 degree C in water and the glass transition temperature of starch is typically about 150-

300 degree C. This argument is not supported by factual evidence because applicant has not shown that all starches have a gelatinization temperature in the range of 60-80 degree C. Furthermore, van Hulle et al teach heating the dough at a temperature of 250-350 degree F which is 121-176 degree C; thus, the heating temperature disclosed by van Hulle et al is within the glass transition temperature stated by applicant. Thus, the process of gelatinization disclosed in van Hulle et al is equivalent to the claimed heating starch to above the glass transition temperature. The Jeffcoat et al reference is only relied upon to show that waxy potato starch is known and it would have been obvious to use such starch when such flavoring is desired. Van Hulle et al disclose on column 5 lines 15-16, "all or part of the amylopectin can be replaced with either potato or tapioca starch".

Applicant's arguments filed Jan. 29, 2004 have been fully considered but they are not persuasive.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Tuesday, Wednesday and Friday.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

April 13, 2004

Lien Tran
LIEN TRAN
PRIMARY EXAMINER
Group 1700